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APR - 4 2003

April 4, 2003

Federal Communications Commission  
Office of Secretary

VIA COURIER

Marlene H. Dortch, Esq.  
Secretary  
Federal Communications Commission  
c/o 236 Massachusetts Avenue, NE  
Suite 110  
Washington, DC 20002

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Re: Second Petition for Waiver and to Extend Divestiture  
Deadline respecting the **MICHELMAN DIVESTITURE**  
**TRUST** and Licenses held pursuant to:

Client No. 310397-00001

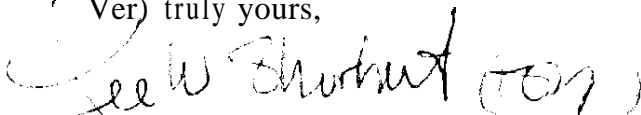
**WT Docket No. 01-35**

Dear Mrs. Dortch:

Transmitted herewith, on behalf of **DAVID MICHELMAN, TRUSTEE**, ("*Michelman*"), is an original and four (4) copies of a **SECOND PETITION FOR WAIVER AND TO EXTEND DIVESTITURE DEADLINE** respecting the **MICHELMAN DIVESTITURE TRUST** and Licenses held pursuant to WT Docket No. 01-35.

Should further information be desired in connection with this matter, kindly communicate directly with this office.

Very truly yours,

  
Lee W. Shubert

Enclosures (5)

cc(w/1 enc.): Russel H. Fox, Esq. — *VIA E-MAIL*  
Mr. David Michelman — *Ditto*  
Lauren Kravetz Patrich, Esq. — *Ditto*

LWS/dml

*014*

In the Matter of )  
 ) WT Docket No. 01-35  
**DAVID MICHELMAN, TRUSTEE** )  
 )  
 )  
To: Wireless Telecommunications Bureau

David Michelman, trustee (“*Trustee*”) of the above-captioned wireless assets divestiture trust (the “*Trust*”), by his attorneys hereby requests that the Federal Communications Commission (“*FCC*” or “*Commission*”) further extend the duration of the Trust. The Trustee continues his efforts to divest the FCC licenses held by the Trustee (the “*Licenses*”) to a third party. Due to the depressed current market for communications assets, however, there is little, if any, current viable interest in the spectrum at this time. The Trustee has engaged a broker to assist with his divestiture efforts, but nevertheless has experienced material difficulties in attempting to sell the Licenses. Accordingly, the Trustee respectfully requests that the Commission extend the current April 7, 2003, divestiture deadline for an additional one-hundred eighty (180) days.” A further extension will serve the public interest by providing additional time for the Trustee to identify an appropriate third party and to divest the Licenses in a prudent and orderly manner.

<sup>1/</sup> On September 20, 2002, a Petition for Waiver and to Extend Divestiture Deadline was submitted on behalf of the Trustee. By action of the Wireless Telecommunications Bureau as of October 8, 2002, the divestiture deadline was extended until April 7, 2003.

## I. BACKGROUND

On October 24, 2001, Telecorp PCS, Inc. (“*Telecorp*”) and AT&T Wireless (“*AWS*,” collectively “*Applicants*”) submitted a series of applications seeking FCC approval of the assignment or transfer of control of certain FCC licenses held by TeleCorp and its affiliates to AWS. Among those applications was a request that AWS be permitted to assign, in whole or in part, certain licenses held by AWS or its affiliates to the Trustee to resolve commercial mobile radio service (“*CMRS*”) spectrum aggregation matters.” On February 12, 2002, the Commission approved the formation of the Trust.<sup>2/</sup> The Trustee and AT&T Wireless entered into an agreement (the “*Trust Agreement*”) through which the Licenses were transferred to the Trust. The Trustee took control of the Licenses on April 11, 2002, creating an original deadline of October 8, 2002, for divestiture.

As explained in footnote 1, hereto, a Petition for Waiver and to Extend Divestiture Deadline was submitted on behalf of the Trustee on September 20, 2002. In October 2002, by action of the Wireless Telecommunications, the divestiture deadline was extended through April 7, 2003. *See Public Notice*, “Wireless Telecommunications Bureau and Grants Request of David Michelman, Trustee, to Extend Divestiture Date,” DA 02-2575, October 8, 2002 (“*Public Notice*”).

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<sup>2/</sup> These licenses that *were* subsequently transferred to the divestiture trust include: AT&T Wireless PCS, LLC Call Sign KNLF221 (File No. 0000634714); AT&T Wireless PCS, LLC Call Sign KNLF256 (File No. 0000634728); and AT&T Wireless PCS, LLC Call Sign KNLF251 (File No. 0000634722).

<sup>3/</sup> *See Public Notice*, “Wireless Telecommunications Bureau and International Bureau Grant Consent for Transfer of Control or Assignment of Licenses from Telecorp, PCS, Inc. to AT&T Wireless Services, Inc.,” DA 02-331, 17 FCC Rcd 2383 (2002)(“*Public Notice*”).

## II. REQUEST FOR WAIVER TO EXTEND DIVESTITURE TRUST

The Commission's February 12, 2002, *Public Notice* approving the transfer of the Licenses to the Trustee required "that any PCS license that is transferred to the trust and that is not further transferred from the trust to the ultimate buyer with 180 days thereafter will automatically cancel."<sup>4/</sup> This directive was in accord with the Commission's decision in its 1998 biennial review proceeding "that a licensee may use a trust for divestiture purposes if the trust is of limited duration (six months or less)."<sup>5/</sup> As noted above, the Trustee was initially required to divest the Licenses by October 8, 2002, and that date was extended until April 7, 2003. The Trust Agreement, however, permits an extension of the trust upon approval of the Commission.

As set forth in detail in previously filed Trustee Reports,<sup>6/</sup> the Trustee has worked to divest the Licenses. A broker, Daniels & Co. ("*Daniels*"), was retained by the Trustee to represent the Trust in the sale of the Licenses. Daniels has attempted to market the licenses to various prospective purchasers, and remains engaged in the further pursuit of interested parties. Although some offers have been made for the Licenses, the offers have

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<sup>4/</sup> *Public Notice* at 4

<sup>5/</sup> See *In the Matter of 1998 Biennial Review Spectrum Aggregation Limits for wireless Telecommunications Carriers*, WT Docket Nos. 98-205 and 96-59, GN Docket No. 93-252, *Report and Order*, 13 FCC Rcd 25132 ¶ 117 & n.263 (1999).

<sup>6/</sup> See, Letter from David Michelman, Trustee of the Michelman Trust, to Marlene H. Dortch, Secretary, Federal Communications Commission, June 10, 2002; Letter from David Michelman, Trustee of the Michelman Trust, to Marlene H. Dortch, Secretary, Federal Communications Commission, August 18, 2002.

been deemed unacceptable, principally due to the levels of consideration being offered by the negotiating parties. Thus, notwithstanding the broker's efforts, the Trustee has been unable to finalize the sale of the Licenses. Presently, there is a low level of interest in the Licenses that, nevertheless, is being pursued.

The fundamental reason for the very tepid market and the delay in the sale of the Licenses by the Trustee is the well-documented decline in U.S. capital markets. Specifically, the decrepit condition of the telecommunications sector<sup>7/</sup> and the general unwillingness of investors to purchase wireless assets have had a significant negative impact upon the Trustee's ability to divest the Licenses. The technology sector further has been undermined by accounting scandals and corporate self-dealing." Wall Street continues to

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<sup>7/</sup> See, e.g., Scott Moris, "Worldcom's False Profits," *The Street.com* (August 12, 2002) (describing the **fall** of the telecommunications sector), available at <http://www.thestreet.com>; Scott Moris, "Telecom Players Seeing Little Upside in Optical," *The Street.com* (August 15, 2002) (reporting that investors no longer want to invest in "phone companies locked in a downward debt spiral with their creditors"), available at <http://www.thestreet.com>; "Telecoms Tumble in Market Stumble," *TR Daily* (September 3, 2002) (reporting severe share price loss in the telecommunication sector), available at <http://www.tr.com>.

<sup>8/</sup> See "WorldCom Admits to \$3.3B More in Errors," *Computerworld*, August 12, 2002 ("WorldCom Inc. said it had discovered \$3.33 billion in accounting errors **dating** to 1999 in addition to the \$3.85 billion worth of errors that it already acknowledged for last year and this year's first quarter."); see also, "Senator Dorgan **Asks** Attorney General Why Enron Executives Avoid Indictment," *Knight Ridder Business News*, August 17, 2002 (discussing the recent "public corporate arrests ... including those of executives at telecommunications giant WorldCom and cable company Adelphia Communications.")

downgrade wireless stocks, which has led to plummeting stock prices for wireless companies and has impaired their ability to acquire new cellular interests.<sup>9/</sup>

The dramatic and broad disintegration of the wireless telecommunications market is a factor that plainly is beyond the Trustee's control but one that indisputably has contributed to the delay in the liquidation of the Licenses. Hence, the Trustee now is compelled to request additional time in which to dispose of the Licenses in an orderly fashion.

The Trustee requests that the Commission extend the duration of the Trust for an additional one hundred eighty (180) days. The Commission has the authority to grant a waiver of its rules if it finds that the underlying purpose of the rule would not be served and that grant of the waiver would be in the public interest.” The Commission has previously found that the transfer of licenses to a divestiture trust is in the public interest.”/ In the instant case, the extension of time would serve the public interest by ensuring sufficient time to identify prospective buyers, complete negotiations and documentation, secure regulatory approval, and then consummate the proposed divestiture of the trust

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<sup>9/</sup> “Wireless Wreck on Wall Street,” *RCR Wireless News*, June 17, 2002 at 1 (reporting record low **stock** prices for wireless companies and noting that a number of investment firms cut their investor recommendations on several wireless companies).

<sup>10/</sup> 47 C.F.R. § 1.925(b)(3)(i).

<sup>11/</sup> See, e.g., *In re Applications of GTE Corporation, Vodafone AirTouch PLC and Bell Atlantic Corporation*, 15 FCC Rcd 11608 (2000); *In re Applications for Vanguard Cellular Systems, Inc., Transferor and Winston, Inc., Transferee. for Consent to Transfer Control of Licenses and Authorizations*, 14 FCC Rcd 3844 (1999); *Shareholders of Jacor Communications, Inc.*, 14 FCC Rcd 6867 (1999); *Tele-Communications, Inc.*, 14 FCC Rcd 3160 (1999).

property. The Commission has granted extensions in similar situations when the extension will result in the transfer of assets to a qualified buyer.<sup>12/</sup>

The Commission may also grant a waiver if the Commission finds that the applicant has no reasonable alternative.” Although the Trustee continues the process of identifying potential buyers for the Licenses, circumstances beyond his reasonable control have prevented him from selling the Licenses. The Trustee requests that the Commission grant the waiver and acknowledge that the nation’s tumultuous economic times have limited any reasonable alternatives that would otherwise be available when selling the Trust’s assets.

#### **111. REQUESTED RELIEF**

For the foregoing reasons, the Trustee requests a waiver of the Commission’s requirements governing the duration of divestiture trusts and an extension of the current April 7, 2003, expiration date for the Trust.

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<sup>12/</sup> See, e.g., *Public Notice*, “Wireless Telecommunications Bureau Grants Request of Michael deLeon Hawthorne, Trustee, to Extend Divestiture Trust,” DA 02-2117, released September 3, 2002); *Public Notice*, “Wireless Telecommunications Bureau Grants Request of Michael deLeon Hawthorne, Trustee, to Extend Divestiture Trust,” DA 02-525, released March 4, 2002); *Public Notice*, “FCC Grants Request of Joseph J. Simmons, Esq., Trustee to Extend Divestiture Trust,” DA 01-1963, 16 FCC Rcd 15681 (2001).

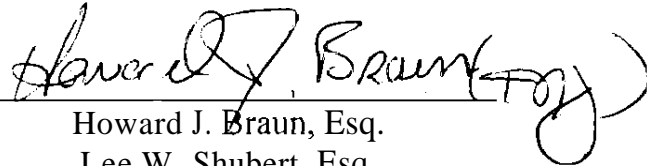
<sup>13/</sup> 47 C.F.R. § 1.925(b)(3)(ii)

In particular, the Trustee requests that the expiration date for this Trust be extended one-hundred eighty (180) days to allow the trustee further opportunity to identify a prospective purchaser and to facilitate the disposal of the Licenses by the Trustee in an orderly fashion. In the interim, the Trustee will amplify his efforts to identify a qualified purchaser. An extension of the divestiture expiration date will serve the public interest and will be consistent with the Commission's previous actions, which granted extensions to similarly situated divestiture trustees.

**WHEREFORE**, the premises considered, David Michelman, Trustee, respectfully requests that the Trust be extended until October 4, 2003.

Respectfully submitted  
**DAVID MICHELMAN, TRUSTEE**

By

A handwritten signature in dark ink, appearing to read "Howard J. Braun", is written over a horizontal line. The signature is stylized with a large, looped initial "H" and a trailing flourish.

Howard J. Braun, Esq.

Lee W. Shubert, Esq.

His Attorneys

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